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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement*/ submitted by the Romanian Independent Society of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 January 2001]

*/ This written statement is issued, unedited, as received in English and French from the submitting non-governmental organization(s).

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ENG

(1) The Romanian Independent Society of Human Rights (SIRDO) is a non-governmental organisation, established in 1990, whose purpose is the protection and the promotion of human rights and fundamental freedoms.

By its actions of counselling and assistance of the victims of torture developed in accordance with the objectives of the undergoing programmes, SIRDO accomplished the creation of trustful relationship with the victims, the initiation of a dialogue with the competent governmental compartments (the General Police Inspectorate, the General Direction of Penitentiaries, the Military Prosecutor's Office Section)

SIRDO has 872 cases under analysis, where abuses of the authorities were registered. They take the form of torture and inhuman and degrading treatments committed by the police officers and guar during the detention in the police lock-up or in the penitentiary, the difference lying in the purpose of torture.

Ever since 1997 SIRDO has constantly signalled these abuses and in 2000 the organisation made its point when leading in to the 56-th session of the UN's Commission on Human Rights a written statement in the scope and consequences of torture in Romania. Periodically the UN Special Rapporteur on Torture was informed on a number of 872 cases by SIRDO.

(2) The petitioners - victims of physical and mental violence - described the methods used for torture, the means and the purpose of these practices, which are enough to assert that these practices have turned into a system in all regions of the country, and it is tolerated and even protected by the authorities.

The methods of torture used by the authorities consist in exerting physical and mental violence on victims, blows all over the body, made in such ways as to not leave too many traces of violence:

- the victim is cuffed in unnatural positions and is then hung up on a peg (the method is called "the roller");
- the victim is wrapped in a wet carpet and then is kicked, clubbed or hit with hard objects;
- the victim is pushed against office equipment or walls;
- the victim is connected to a power device and is electrocuted; metallic conductors are placed on the victim's arms, back, legs, or even genitals;
- mental trauma: outrage, vulgar and violent language, direct threats or threats against other persons (wife, close relatives, victim's friends), promises made in order to confuse the accused, while the victim is sometimes exposed to cold weather, hunger or thirst.

The means used when applying torture are: the fists, the legs, rubber clubs, baseball bats, cuffs, metallic bars, chairs, electric shocks devices etc.

The purpose of applying torture, such as it results from declarations and reports is:

- to get the victim or a third person acknowledge the accusation, to get information, confessions - made according to the investigators wishes;
- to punish the victim for an action that the victim or another person committed or is presumed to have committed (more frequently in penitentiaries);
- to intimidate the victim or exert pressure on another person;

- to determine the victim not to disclose certain aspects linked to developing the penal process.

The only forms of the victim's protest against these treatments are food refusal and self-maiming, as the access to remedies is systematically hindered.

(3) Although these aspects were presented to the competent authorities from the governmental structures (the Ministry of the Interior, the Public Ministry, the Ministry of Justice), the responses SIRDO got are formal and disclose a superficial approach of the problem of torture in Romania, and not a serious approach of the core matters.

By the consequences it produces, torture directly or indirectly affects large categories of population: men, women, underage persons, old persons, national minorities, foreigners, groups of people deprived of freedom.

(4) The Romanian Constitution shows that "no one can be subjected to torture or any kind of punishment or inhuman or degrading treatment" (art. 22, par. 2). The Penal Code and the Code of Penal Procedure also incriminate the application of torture (art. 267, Penal Code etc.)

More, Romania ratified on 9 October 1990 UN's Convention against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment, and according to art. 11, par. s), this treaty is the internal law. Despite the existence of these legal provisions the responsible authorities seem not to understand the importance, the juridical power and the necessity to apply these provisions, and still prevails on obsolete secret norms that run counter to the constitutional provision (law no. 23/1969 on the regime of punishments application, secret military orders that settle the preventive arrest or the development of the penitentiary activity etc.)

The maintenance of military structures in the activities of police judiciary investigations within the penitentiary staff and Prosecutor's Offices runs counter to the international standards and recommendations on detention and penal investigations and hinders the control of civilian structures on the activity developed under a military regime.

(5) We can assert that the impunity against the authorities who are guilty of:

- physical and mental violence against the individual;
- intimidation and subtle manipulation exerted against the person;
- the formalism when approaching the complaints

already represents a traditional persecution practice, turned into a repressive system.

These practices are deeply rooted in Romania's communist past and they make the implementation of international conventions and the existence of an independent administrative civilian control impossible.

Being convinced of the truth contained in the Resolution 2000/68 of the Commission on Human Rights adopted on 27 04.2000 and of the viability of the recommendations on impunity, SIRDO considers that the possibility to conclude agreements with independent experts in change with the examination of all aspects of human rights infringement constitutes the key element for the states to acknowledge the maintenance of a systematical mechanism perpetuating human rights infringements.

SIRDO equally wishes to show that the activity of independent experts should not affect the mandate of UN's Special Rapporteurs, as regards an unwanted diminution of their intervention.

(6) Because of the abuses they commit, of the purely formal approach of the complaints coming from the petitioners and of the constant refusal to admit the existence of ill-treatment in Romania, the authorities block the possibility of the victims to use their right to remedies.

The victims right to remedies must ensure the individual's trust in the possibility to be guaranteed fairness, it must be effectively acknowledge and full and urgently applied.

(7) As regards the things presented above, SIRDO requests that the states participative effort should be quickened, using the competence of UN's Special Rapporteur on Torture in supporting UN's Commission on Human Rights to establish the monitoring procedure for supervising the maintenance of the request formulated in the statement E/CN.4/2000/NGO/41 in Romania:

- the full respect of the provisions of the art.2, par. 1 from the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- the application of art. 11 of the Convention, allowing the systematic supervision of rules, instructions, methods and practices of the investigation and of the provisions as regards the treatment of persons in any form of freedom deprivation;
- the process of demilitarising the state institutions, concerning the Ministry of the Interior (the Romanian Police) and the Ministry of Justice (the General Direction of Penitentiaries) and their subordination to the Local Administration with competencies in functioning as part of the community, as a guarantee of the respect for the person' s freedom and safety;
- the establishment of measures to rehabilitate the victims of torture, for them to obtain the necessary compensations for restoring their rights.

The alarming increase of the requests of the victims of torture, visible in the increase of the number of cases reaching SIRDO in 2000, in the form of reports that have been dated and signed by petitioners (872 cases) and the fact that these practices are present in all the regions of the country, enable us to request the Commission on Human Rights to take the most radical measures for eradicating torture in Romania, in cooperation with the Commission against Torture and using the competence of UN's Special Rapporteur on Torture.